Editor's note: 83 I.D. 538

WILLIAM J. SPARKS

IBLA 76-580 Decided November 4, 1976

Appeal from decision of New Mexico State Office, Bureau of Land Management, rejecting a drawing entry card lease offer NM 27184.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Drawings

The term "signed and fully executed" as used in 43 CFR 3112.2-1(a) does not interdict the use of a rubber stamp or other mechanical device to affix a signature to a drawing entry card, provided that it is the applicant's intention that the facsimile be his signature.

2. Oil and Gas Leases: Application: Generally -- Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents

Where a facsimile affixed by means of a rubber stamp or other mechanical device constitutes an applicant's signature on a drawing entry card lease offer, a State Office of the Bureau of Land Management need not presume that the applicant, rather than an agent, stamped the card. It is proper for the BLM office to make inquiry into the filing to establish that the applicant's signature was affixed at his request and that he formulated the offer. If it is disclosed that the signature was affixed pursuant to a power of attorney, and the offer was not accompanied by the statements required by 43 CFR 3102.6-1, the offer must be rejected.

3. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents -- Oil and Gas Leases: Applications: Drawings

> Under 30 U.S.C. § 226 (1970), the Department has no authority to issue a noncompetitive oil and gas lease to anyone other than the first qualified applicant. If a drawing entry card lease offer is signed by an agent or attorney-in-fact in behalf of the applicant, or if a facsimile signature of the applicant is affixed upon the offer by an agent or attorney-in-fact, the offer cannot be considered to have been submitted by a qualified applicant unless it is accompanied by the statements required by 43 CFR 3102.6-1.

APPEARANCES: Clifford C. Towns, Jr., Esq., Dallas, Texas, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

The drawing entry card of William J. Sparks was assigned first priority in a drawing for Parcel 331 in the November 1975 simultaneous filing procedure for noncompetitive oil and gas leases in the New Mexico State Office, Bureau of Land Management (BLM). 43 CFR Subpart 3112. Examination of the card showed that the signature of "Wm. J. Sparks" was mechanically imprinted and not an original signature, whereupon BLM called upon Sparks to file an affidavit

over his personal signature stating whether or not it is his intention that the mechanically printed signature be his signature, and further, a statement that he personally placed the imprinted signature upon the card or, if the action was done by a third party, that the action was done in his presence. Sparks replied that he intended the mechanically imprinted signature to be his signature and submitted an affidavit that, effective September 30, 1975, he had appointed one E. Carter Bills III as his attorney-in-fact for the limited purpose of executing drawing entry cards for inclusion in the BLM simultaneous filing procedure for oil and gas leases and such other documents necessary for filing his name with the Bureau of Land Management in connection with such offers for oil and gas leases. He assured that the authority conveyed included the mechanical reproduction of his signature by Bills on any document to be filed with BLM.

Thereafter BLM, by decision dated March 22, 1976, rejected the drawing entry card filed by Sparks for Parcel 331 for the reason that the mechanically imprinted facsimile signature of "Wm. J. Sparks" had been placed on the card by E. Carter Bills acting as attorney-in-fact and compliance had not been made with the requirements of 43 CFR 3102.6-1. This appeal followed.

Appellant argues that the regulations do not have a requirement that a principal must personally place a drawing entry card

in a machine to imprint a facsimile signature thereon or that such imprinting must be done in the presence of the principal. Appellant suggests that this language in 43 CFR 3112.2-1(a), "offers to lease * * * must be submitted on a form * * * 'simultaneous oil and gas entry card' signed and fully executed by the applicant or his duly authorized agent in his behalf" (emphasis by appellant), allows the actions taken preceding the filing of the subject drawing entry card for Parcel 331. Accompanying the statement of reasons for the appeal were two affidavits; one, dated May 14, 1976, from E. Carter Bills III, stated that as attorney-in-fact for William J. Sparks there is no understanding between himself and Sparks or any other person, oral or written, whereby Bills or any other person has received or is to receive any interest including overriding royalty or operating agreement in any lease filed for or on behalf of Sparks by Bills, including Parcel 331, the subject of this appeal, and further that he, Bills, has acted as attorney-in-fact for Sparks in this fashion and manner since September 30, 1975. The second affidavit, dated May 15, 1976, was from William J. Sparks, in which he stated that the power of attorney to E. Carter Bills is for the specific limited purpose of filing offers to lease lands available for oil and gas filings through the Bureau of Land Management, for the sole and exclusive benefit of Sparks, and grants to Bills specific authority to execute all statements of interest and of lease holdings in behalf of Sparks, and to execute all other statements

required by the statutes or regulations, and that he, Sparks, agrees to be bound by such representations of Bills and waives any and all defenses which might be available to him to contest any of the actions of Bills under this power of attorney. Further, that the limited power of attorney authorizes Bills to have the signature of Sparks reproduced mechanically on any document necessary to file offers to lease for lands made available by BLM pursuant to 43 CFR Part 3100, including Parcel 331, the subject of this appeal. And finally, Sparks acknowledged that the limited power of attorney from himself to Bills became effective on September 30, 1975, and applies to whatever documents that have been executed on his behalf since that date. In conclusion, appellant argues that the affidavits have effectively cured any defect under 43 CFR 3102.6-1 which might have existed in his offer for Parcel 331.

It is obvious from the foregoing that the function of Bills vis-a-vis federal oil and gas lease offers in the name of William J. Sparks is something greater than being a mere amanuensis or scribe. See Evelyn Chambers, 27 IBLA 317, 83 I.D. 533 (1976); Robert C. Leary, 27 IBLA 296 (1976).

[1] In Mary I. Arata, 4 IBLA 201, 78 I.D. 397 (1971), and Robert C. Leary, supra, this Board decided appeals from the rejection of drawing entry cards on which the signature had been affixed

by means of a rubber stamp facsimile signature of the offeror. The Board held that 43 CFR 3112.2-1 does not proscribe the use of a rubber stamp or other mechanical device to affix a facsimile signature to a drawing entry card provided it is the intention of the offeror that the imprint be his signature. We adhere to that ruling. However, we must point out, as we did in Leary, supra, that a hand-written signature and a facsimile signature affixed by mechanical means are not fully equivalent in every respect. A hand-written signature is presumed to have been written by the person named therein, but there is no such presumption attaching to a facsimile signature. 80 C.J.S. Signatures § 8 (1953).

[2] A rubber-stamped or mechanically affixed signature on a drawing entry card does not constitute the applicant's signature unless it is so intended. Without additional evidence establishing that appellant intended the facsimile to be his signature, it is not improper to find that such intent is not established. Roberts v. Johnson, 212 F.2d 672 (10th Cir. 1954). Accordingly, it is appropriate for a BLM State Office to require an offeror named in a drawing entry card to which a facsimile signature is affixed to supply evidence of intent. But to meet the requirement that offers be "signed and fully executed" it is not necessary to show that the offeror personally stamped the offer with his facsimile or that such action occurred in his presence. Leary, supra.

As we have stated it is within the province of a BLM State Office to inquire into the circumstances surrounding the preparation and filing of a drawing entry card which has a signature affixed by means of a rubber stamp or other mechanical device. Indeed, the State Office must inquire if it is not completely satisfied that there has been compliance with all applicable regulations. At a minimum, BLM should inquire to ascertain who affixed the facsimile signature, where the action occurred and why the facsimile signature was used. Further, BLM may inquire to learn who determined what land to file for. This information may be supplied by a narrative statement rather than an affidavit. 18 U.S.C. § 1001 (1970).

[3] If the Department determines to issue a noncompetitive oil and gas lease to a parcel of land not within the known geologic structure of a producing oil or gas field, it must issue such lease to the first qualified applicant therefor. McKay v. Wahlenmaier, 226 F.2d 35, 37 (D.C. Cir. 1955); Ishmael Guerra, 26 IBLA 116 (1976). In the simultaneous filing procedures followed by the Department, priority is established by a drawing from the entry cards submitted for each parcel shown on the official list of lands available to such leasing. See 43 CFR 3112.2-1; McKay v. Wahlenmaier, supra; Ballard E. Spencer Trust, Inc., 18 IBLA 25, 27 (1974). 1/

1/ Aff'd sub nom. B.E.S.T., Inc. v. Morton, Civ. No. 75-060 (D. N.M., filed August 19, 1975), appeal pending.

Although the affidavits submitted with this appeal comply with the requirements of the regulations relating to signatures by attorneys-in-fact, the drawing entry card of Sparks must be rejected because the offer was deficient when filed and the rights of a third party have intervened. As this Board stated in Ballard E. Spencer Trust, Inc., supra at 27:

> Finally, and perhaps more important than any other consideration, is the right of a qualifying third party offeror to receive a noncompetitive lease. The Mineral Leasing Act specifically provides that lands to be leased noncompetitively must be leased to the first qualified person making application, whereas lands within the known geological structure of a producing oil or gas field shall be leased to the highest responsible qualified bidder. 30 U.S.C. § 226(b)(c) (1970). Under the simultaneous filing procedure for lands to be leased noncompetitively, all offers for the same land are considered to have been filed simultaneously, and priorities are determined by a drawing. If the first drawn offer is not acceptable by reason of some failure to comply with the regulation it cannot be accorded a priority as of the time it was officially filed. The next drawn offer in acceptable form earns priority as of the date and time of the simultaneous filing, and that offeror is first qualified as a matter of law to receive the lease. See 43 CFR 3112.2-1(a)(3); 43 CFR 3112.4-1; McKay v. Wahlenmaier, 226 F.2d 35 (D.C. Cir. 1955); Duncan Miller, 17 IBLA 267, 268 (1974).

The drawing entry cards contain instructions which, inter alia, provide that "compliance must also be made with the provisions of 43 CFR 3102." Part 3102 defines the qualifications of lessees, and 3102.6 sets forth the statements and evidence required when an attorney-in-fact or agent signs an offer in behalf of the applicant.

If the offeror's signature is impressed by an agent or attorney-in-fact by means of a facsimile signature stamp or otherwise, the applicant cannot be considered "qualified," and the offer to lease drawn with first priority accepted, unless the statements required by 43 CFR 3102.6-1 have been filed with the drawing entry card. Southern Union Production Co., 22 IBLA 379 (1975); Husky Oil Co., A-30440 (October 27, 1965).

It has been repeatedly held by this Board that, in the simultaneous filing procedure, a first-drawn card which is defective because of noncompliance with a mandatory regulation must be rejected and may not be "cured" by submission of further information. James D. Caddell, 25 IBLA 274 (1976); Ballard E. Spencer Trust, Inc., supra at 27-28; Southern Union Production Co., supra; Union Oil Co. of California, 71 I.D. 287 (1964); aff'd Union Oil Co. of California v. Udall, Civ. No. 2595-64 (D.D.C. December 27, 1965).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Newton Frishberg
Chief Administrative Judge

Frederick Fishman
Administrative Judge